

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION**

**Agenda Item # III.B.1.**

**Agenda Item Summary:** The Department requests the Board initiate rulemaking to amend the air quality incorporation by reference rules to adopt the current editions of federal regulations, state statutes, and state rules. Amendments to update citations and to make minor editorial changes are included in this rulemaking.

**List of Affected Rules:** This rulemaking would amend ARM 17.8.102, 103, 106, 130, 316, 320, 340, 401, 801, 819, 822, 1201, and 1204.

**Affected Parties Summary:** The proposed rule amendments could affect all parties regulated by the Department under the air quality rules.

**Scope of Proposed Proceeding:** The Department requests that the Board initiate rulemaking, conduct a public hearing to consider the proposed amendments to ARM 17.8.102, 103, 106, 130, 316, 320, 340, 401, 801, 819, 822, 1201, and 1204, and take testimony on inclusion of the rule amendments into the State Implementation Plan (SIP).

**Background:** Annually, the Department requests the Board update the rules that incorporate by reference state statutes, state administrative rules, and federal regulations. The incorporation by reference updating is accomplished by amending the dates in ARM 17.8.102. An attachment addresses the major changes in federal rules that will be adopted as a result of this action. The failure to adopt the most recent edition of the Code of Federal Regulations may result in the loss of primacy for the air program. Other proposed amendments that make no substantive changes in the rules are included in this rulemaking. These include updating citations and other minor editorial changes.

**Hearing Information:** The Department recommends the Board appoint a hearing officer and conduct a public hearing to take comment on the proposed amendments and inclusion of the proposed amendments in the SIP. EPA regulations require a public hearing to take comment on adoption of revisions to the SIP. These amendments would be submitted to EPA as a SIP revision.

**Board Options:** The Board may:

1. Authorize the Department to initiate rulemaking and issue the attached Notice of Proposed Amendment of Rules;
2. Modify the Notice and initiate rulemaking; or
3. Determine that the amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

**DEQ Recommendation:** The Department recommends that the Board initiate rulemaking,

conduct a hearing, and appoint a hearing officer as described in the proposed MAR notice.

**Description of Proposed Rule Revisions:**

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES ~~AND AVAILABILITY OF REFERENCED DOCUMENTS~~ (1) Unless expressly provided otherwise, in this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2002~~ 2003, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference refers to the ~~1994~~ 2000 edition of the USC and Supplement ~~5-(2000)~~ I (2002);

(c) referred to a section of the Montana Code Annotated(MCA), the reference is to the ~~2001~~ 2003 edition of the MCA;

(d) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2002~~ 2003, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-111, MCA

IMP: Title 75, chapter 2, MCA

Other proposed revisions, which would update citations and make minor editorial changes, would amend ARM 17.8.103, 106, 130, 316, 320, 340, 401, 801, 819, 822, 1201, and 1204. These proposed amendments are described in the proposed MAR notice.

**ENCLOSURES**

The following information is attached to this summary:

- 1) Draft Notice of Public Hearing on Proposed Amendment;

**Board of Environmental Review  
Attachment to Executive Summary**

This attachment lists the major changes to the CFR sections that are incorporated by reference in the air program rules, and were published in the Federal Register between July 1, 2002 and June 30, 2003. These changes are included in the July 1, 2003, CFR edition that is being incorporated by reference in this rulemaking.

**CFR Sections Affected:** 40 CFR 63.1-2; 63.6; 63.9-10; 63.13; 63.50; 63.52-53

**General Explanation:** EPA promulgated amendments to the General Provisions for national emission standards for hazardous air pollutants (NESHAP) and to the rule which establishes criteria and procedures for equivalent emission limitations adopted pursuant to Clean Air Act (CAA) section 112(j). The amendments: (1) established a new timetable for the submission of section 112(j) Part 2 applications, which was based on the timetable EPA had agreed to follow for promulgation of the remaining NESHAP, and modified the content requirements for Part 2 applications; (2) established revised procedures for requests for applicability determination previously submitted under the section 112(j) rule, and for section 112(j) applications submitted by sources that previously obtained a case-by-case determination under CAA section 112(g); and (3) adopted various amendments to the NESHAP General Provisions governing startup, shutdown, and malfunction (SSM) plans, some of which were proposed by EPA pursuant to a settlement agreement in a judicial action concerning the prior amendments published on April 5, 2002.

**CFR Sections Affected:** 40 CFR 63.860-862, 864-867

**General Explanation:** EPA promulgated amendments to the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. The amendments clarified and consolidated the monitoring and testing requirements.

**CFR Sections Affected:** 40 CFR 63.1500, 1503, 1505-1506, 1510-1512, 1515, and 1517

**General Explanation:** On March 23, 2000, the EPA issued national emission standards for hazardous air pollutants (NESHAP) for secondary aluminum production facilities under section 112 of the Clean Air Act (CAA). EPA promulgated amendments to the applicability provisions for aluminum die casters, foundries, and extruders. The amendments also added new provisions governing control of commonly-ducted units; revised the procedures for adoption of operation, maintenance, and monitoring plans; revised the criteria concerning testing of representative emission units; revised the standard for unvented in-line flux boxes; and clarified the control requirements for sidewall furnaces. These changes were made pursuant to settlement agreements in two cases seeking judicial review of the NESHAP for secondary aluminum production.

**CFR Sections Affected:** 40 CFR 63.1930 through 1990 (Subpart AAAA)

**General Explanation:** EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for municipal solid waste (MSW) landfills. The final rule is applicable to both major and area sources and contains the same requirements as the Emission Guidelines and New Source Performance Standards (EG/NSPS). The final rule added startup, shutdown, and malfunction (SSM) requirements, added operating condition deviations for out-of-bounds

monitoring parameters, required timely control of bioreactor landfills, and changed the reporting frequency for one type of report.

The final rule fulfills the requirements of section 112(d) of the Clean Air Act (CAA), which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b), and helps implement the Urban Air Toxics Strategy developed under section 112(k) of the CAA. The intent of the standards is to protect the public health by requiring new and existing sources to control emissions of HAP to the level reflecting the maximum achievable control technology (MACT).

The HAP emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene. Each of the HAP emitted from MSW landfills can cause adverse health effects provided sufficient exposure.

**CFR Sections Affected:** 40 CFR 63.9280 through 9375 (Subpart P) (Subpart P)

**General Explanation:** EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for engine test cells/stands. EPA has identified engine test cells/stands as major sources of hazardous air pollutants (HAP) such as toluene, benzene, mixed xylenes, and 1,3-butadiene. The final NESHAP will implement section 112(d) of the Clean Air Act (CAA), which requires all major sources of HAP to meet emission standards reflecting the application of the maximum achievable control technology (MACT). The final NESHAP will protect public health by reducing exposure to air pollution.